Supreme Court, U.S.
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No. 96-420

In The

Supreme Court of the United States

October Term, 1996

TERENCE D. HUGHEY,

Petitioner,

vs.

JMS DEVELOPMENT CORPORATION,

Respondent.

On Petition For Writ Of Certiorari To The Eleventh Circuit Court Of Appeals

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether this Court should review the Eleventh Circuit's finding that JMS was not in violation of the Clean Water Act's "no discharge without an NPDES permit" standard with regard to the natural occurrence of stormwater discharge where the facts of the case established (1) compliance with the standard was factually impossible; (2) no NPDES permit covering stormwater discharges existed when JMS conducted its development activity; (3) JMS was in good faith compliance with local pollution control requirements that substantially mirrored the proposed NPDES discharge standards and (4) the discharges were minimal.

2. Whether this Court should review the Eleventh Circuit's alternative holding that the trial court's injunction barring JMS from discharging stormwater from its residential subdivision "if such discharge would be in violation of the Clean Water Act" failed to meet the requirements of Federal Rule of Procedure 65(d) and failed to contain an operative command as required under prior decisions of this Court.

LIST OF ALL PARTIES

Terence D. Hughey
JMS Development Corporation

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STATEMENT OF THE CASE

Statement of the Facts

The Respondent in this case is a closely held Georgia corporation known as JMS Development Corporation ("JMS"). In 1991, JMS purchased a 19.2-acre tract of land in Gwinnett County, Georgia, for development as a residential subdivision. (R2-16-24).

Petitioner Terence D. Hughey is a Gwinnett County resident who opposed the development of the subdivision from its inception. In January 1992, Petitioner filed suit against JMS and Gwinnett County in the Superior Court of Gwinnett County. (R12-84, 85, 86). Although Petitioner did not live in close proximity to the proposed subdivision, Petitioner alleged that the subdivision would result in increased traffic and noise and sought to overturn JMS' zoning and to enjoin the development. (R12-86). The Superior Court dismissed Petitioner's complaint.

JMS sought and obtained all permits available from and required by Gwinnett County for the development of the property as a residential subdivision. (R2-16-25). As part of this process, JMS submitted a comprehensive soil and erosion control plan which was approved by Gwinnett County. On March 31, 1992, JMS obtained a Gwinnett County development permit which met the land-disturbing activity and stormwater discharge requirements for Gwinnett County[1] and the State of Georgia. (R2-16-25).

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[1] Gwinnett County has the authority to administer Georgia's Soil Erosion and Sedimentation Control Act in Gwinnett County.

During late spring and early summer, JMS cleared, graded and grubbed less than five acres of its property for the construction of streets, gutters and storm sewers. (R2-16-25). The company installed state-of-the-art erosion and sedimentation control structures, including silt fences, check dams, grassing, sloping and a sediment retention basin, installed at the direction of Gwinnett County and State of Georgia officials. (R2-16-25). JMS finished the subdivision by August and received approval from Gwinnett County to record its final plat on August 6, 1992. (R2-16-25). The plat subdivided the property into 50 lots and named the subdivision Rivercliff Place. With the recording of the plat, JMS dedicated its streets, gutters and storm sewer system to Gwinnett County, and Gwinnett County accepted the dedication. (R2-16-25). As of August 6, 1992, JMS had ceased all land-disturbing activity and was only in the business of selling lots within the subdivision.

From JMS' property, a small, unnamed stream approximately four feet wide originates and trickles off the property, under a road, and across property belonging to third parties. The stream intersects the Yellow River approximately 840 feet from the JMS property. (R11-46). At the point of confluence of the stream and the Yellow River, the Yellow River is approximately 75 feet wide. (R12-146, 147). Petitioner resides on property located some 2,800 feet downstream from the intersection of the stream with the Yellow River. (R11-46).

On August 28, 1992, Petitioner filed suit against JMS in the United States District Court for the Northern District of Georgia under the citizen's suit provisions of the Clean Water Act, seeking injunctive relief, penalties and

attorney's fees. In his complaint, Petitioner alleged that JMS was in violation of the Clean Water Act for discharging stormwater into waters of the United States without an NPDES permit.

As of March 31, 1992, the date on which JMS was issued a development permit from Gwinnett County, there was no NPDES permit available in Georgia for stormwater discharge associated with development activity. Since June 28, 1974, Georgia's Environmental Protection Division ("EPD") has administered the NPDES permitting program in the State of Georgia with authority from the EPA. The EPD's approach to the permitting scheme for stormwater discharges was to follow the lead of the EPA.[2] As of March 31, 1992, EPA had not promulgated a permit for stormwater discharges associated with industrial activity.[3] In the interim, EPD regulated

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[2] The Affidavit of David M. Word, Chief of the Water Protection Branch of the Georgia Environmental Protection Division is reprinted in the Appendix, A. 3 (R2-16-30).

[3] Stormwater discharges did not come under the Clean Water Act until 1987, when Congress adopted a complex "phased-in approach" establishing various classifications of discharges and timetables by which NPDES permits were to be promulgated. 33 U.S.C. §1342(p). The Act established a moratorium until October 1, 1992, on the permit requirement for most stormwater permits. Stormwater discharges associated with industrial activity, however, were not subject to the moratorium. 33 U.S.C. §1342(p)(2)(B). EPA extended the statutory deadline for the promulgation of permits for discharges associated with industrial activity to October 1, 1992. 57 F.R. 11,394. On June 4, 1992, the Ninth Circuit struck down the extension. *Natural Resources Defense Council v. EPA*, 966 F.2d 1292 (9th Cir. 1992). On October 31, 1992, the moratorium was extended to October 1, 1994. 33 U.S.C. §1342(p)(1).

stormwater discharge from construction activity through Georgia's Erosion and Sedimentation Control Act, which was administered in Gwinnett County through the issuance of development permits. (A. 6; see fn.1). On September 3, 1992, EPA issued a general permit for discharges associated with industrial activity, which required applicants to submit their requests by October 1, 1992. Georgia's EPD published on September 23, 1992, a notice of intent to issue two general permits, one of which would apply to construction activities. On September 28, 1992, JMS filed a notice of intent with the EPD to come under the permit for construction activity.

In a separate action, Petitioner appealed the general permit applicable to construction activity. The effect of his appeal under Georgia administrative regulations was to stay the issuance of the permit. Ga. R. & Reg. 391-1-2-.10. Petitioner eventually won the appeal on technical procedural grounds.[4]

Federal regulations define stormwater discharge associated with industrial activity to include "construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale". 40 C.F.R. 122.26 (b)(14)(x). JMS argued on appeal that Congress did not intend its construction activity to constitute industrial activity for purposes of the stormwater discharge permitting program. This issue was not addressed by the Eleventh Circuit in light of its finding that JMS was not in violation of the Clean Water Act.

[4] Petitioner has challenged each NPDES permit applicable to construction activity proposed by the EPD. As of the filing date of the Petition for Certiorari, there was still no permit available in Georgia.

In his petition, Petitioner grossly misstates the evidence before the trial court. Petitioner claims that JMS' discharges "converted a formerly clear running stream . . . into a dead stream" and "choked downstream wetlands." (Pet. for Cert., p. 7, 8). Petitioner asserts that he noticed the discharge of silt into the stream on his "daily walks" in his subdivision. (Pet. for Cert., p. 9). To the contrary, Petitioner admitted that he does not live in or near the subdivision (R12-31, 35); he does not live adjacent to or near the stream (R12-31, 35); he had no knowledge of the condition of the stream prior to his efforts to bring a Clean Water Act case against JMS (R10-115); the stream is on private property and is not accessible to the general public (R11-46); he has never made any use of the stream (R10-106; R12-31).[5] Further, there was no evidence in the record, and no finding by the trial court, that wetlands had been affected or altered by any alleged discharge from the subdivision.

Petitioner further asserts that JMS' discharges "polluted the Yellow River" and "flowed through Petitioner's property." (Pet. for Cert., p. 8). Again, the record is devoid of any such proof. Petitioner failed to introduce any scientific evidence at trial that discharge from the JMS subdivision actually made its way down the unnamed stream to the Yellow River. JMS introduced into evidence water samples of the Yellow River during rainfall events which established that turbidity levels were

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[5] JMS objected to Petitioner's standing in the trial court and on appeal. The Eleventh Circuit declined to address the issue, in light of its holding that JMS was not in violation of the Act. 78 F.3d at 1533, fn. 13.

lower downstream from the confluence with the stream than above. (Exh. 51). JMS also introduced expert testimony that discharges from the four-foot wide stream would not increase the turbidity of the Yellow River. (R12-145, 146). Petitioner's expert made no scientific investigation into the effect of discharges from the stream into the Yellow River. (R12-78).

Petitioner also misrepresents the course of the proceedings before the District Court. After the Court issued the Temporary Restraining Order on August 31, 1992, the Court extended the restraining order on September 11, 1992, with the consent of JMS. The Court subsequently issued a preliminary injunction on November 9, 1992. Petitioner fails to mention that on November 20, 1992, the Court stayed its November 9, 1992 order indefinitely. (A.1) The District Court did not reinstate injunctive relief until its order dated February 24, 1994 (and accompanying judgment dated February 25, 1994), in which the Court enjoined JMS from discharging stormwater . . . "if such discharge would be in violation of the Clean Water Act." (A.2) It was this final injunctive relief order which was overturned by the Eleventh Circuit's alternative holding.

REASONS TO REJECT THE PETITION

I. THE ELEVENTH CIRCUIT'S APPLICATION OF THE CLEAN WATER ACT TO THE LIMITED FACTS OF THIS CASE IS IN HARMONY WITH THE INTENT AND PURPOSE OF THE CLEAN WATER ACT AND PRIOR DECISIONS OF THIS COURT.

This Court noted in *Weinberger v. Romero-Barcelo*, 456 U.S. 305 (1982), "the integrity of the Nation's waters, . . . , not the permit process, is the purpose of the FWPCA." The Eleventh Circuit's decision in the case at bar mirrors this Court's interpretation of the NPDES permitting scheme as applied to the natural occurrence of stormwater discharge. The unique facts presented in the case below resulted in a common sense decision by the Eleventh Circuit, narrowly confined to the specific facts of the case. Thus, this Court should deny the Petition for Certiorari.

The Petitioner sought to hold JMS liable under the Clean Water Act for discharging stormwater from its residential subdivision without an NPDES permit even though the undisputed facts established that (1) Georgia's Environmental Protection Division (EPD) had not promulgated an NPDES permit as of March of 1992, when JMS began its development of the Rivercliff Place subdivision; (2) as of March of 1992, JMS had acquired a development permit from Gwinnett County, Georgia, which authorized JMS to commence its development activity and which was issued in compliance with Georgia's Erosion and Sedimentation Control Act, Ga. Code Ann. §12-7-1 et seq.; (3) the development permit mirrored the requirements of the general NPDES permit issued by

the EPD in September of 1992 and authorized the discharge of stormwater; (4) it was factually impossible to stop the discharge of every particle of stormwater; and (5) the alleged discharges were de minimis.

The Eleventh Circuit limited its opinion to the unique facts presented in this case. The Court's common sense approach began with reliance upon authority of this Court that where the literal or plain meaning of a statute produces absurd or unreasonable results contrary to the purpose of the statute, the Supreme Court has followed the purpose of the statute. 78 F.3d at 1529, citing *Perry v. Commerce Loan Co.*, 383 U.S. 392 (1966). The Eleventh Circuit correctly determined that Petitioner's strict interpretation of the Clean Water Act was unreasonable given the limited facts of this case. The Court distinguished this case from one involving a manufacturing facility "that could abate the discharge of pollutants by ceasing operations" and focused on the fact that due to the natural occurrence of rainfall within the subdivision, it was factually impossible to prevent the discharge of every particle of stormwater during a rainfall event. *Id.* at 1530. Further, this was not a situation where the alleged violator's conduct was not being regulated; Respondent's discharges were regulated by the development permit issued by Gwinnett County, Georgia, which was substantially similar to the NPDES permit promulgated by the EPD.

The Eleventh Circuit's approach is consistent with this Court's interpretation of the purpose of the 1972 Amendment to the Clean Water Act. In *EPA v. State Water Resources Control Board*, 426 U.S. 200 (1976), this Court noted that the NPDES permit "defines, and facilitates

compliance with the enforcement of, a preponderance of a discharger's obligations under the Amendments", *id.* at 205 (holding that federal facilities were not subject to state NPDES permit requirements). In *Chemical Manufacturer's Association v. NRDC*, 470 U.S. 116 (1985), this Court rejected a literal interpretation of §301 (1) of the Act and held that the EPA was not prohibited by §301 from issuing "fundamentally different factor" variances from toxic pollutant effluent limitations. The Court deferred to the EPA's interpretation of the Act, in part, on the Court's observation that the dispute was essentially over the means used by the EPA to achieve the goals of the Act. 470 U.S. at 131. In *Arkansas v. Oklahoma*, 503 U.S. 91 (1992), this Court rejected the Tenth Circuit's interpretation of the Clean Water Act restricting the issuance of an NPDES permit where the receiving body of water was in violation of water quality standards, finding that the Clean Water Act vested in the EPA and the states' broad authority to develop long range, area-wide programs to alleviate and eliminate existing pollution. And, in *Weinberger v. Romero-Barcelo*, supra, this Court rejected a literal interpretation of the injunctive relief provisions of the Clean Water Act, noting that "this is a statute in which Congress envisioned, rather than curtailed, the exercise of discretion." 456 U.S. at 316.

This Court has denied certiorari to review an appellate court's refusal to apply a no discharge standard for discharges not specifically authorized by an NPDES permit. In *Atlantic States Legal Foundation Inc. v. Eastman Kodak Company*, 12 F.3d 353 (2nd Cir. 1994), *cert. denied*, ___ U.S. ___, 115 S.Ct. 62 (1994), the Second Circuit held that the discharge of pollutants not listed in a permit

issued by the state regulatory agency was not unlawful under the Clean Water Act. This Court declined to review the decision.

Like the Second Circuit's decision in *Atlantic States*, the decision at bar represents a well-reasoned opinion, applying the requirements of the Clean Water Act to the narrow facts of this case. Therefore, this Court should deny the Petition for Certiorari.

II. THE ELEVENTH CIRCUIT'S DECISION DOES NOT CONFLICT WITH AUTHORITY FROM OTHER CIRCUIT COURTS OF APPEAL.

Contrary to Petitioner's argument, no other United States Court of Appeals has found a defendant liable under the Clean Water Act for discharges of stormwater from a residential subdivision where, despite the good faith efforts of the defendant, it was impossible to prevent the discharge in its entirety, and where the defendant possessed a permit issued in compliance with state laws which mirrored the proposed but not yet available NPDES permit. The Petitioner relies upon cases where the alleged discharges could have been stopped by some affirmative act of the defendant: *Sierra Club v. Cedar Point Oil Co.*, 73 F.3d 546 (5th Cir. 1996), petition for cert. filed, 64 U.S.L.W. 3780 (U.S. May 10, 1996) (discharges of wastewater from oil and gas production); *Concerned Area Residents for the Environment v. Southview Farm, et al.*, 34 F.3d 114 (2nd Cir. 1994) (discharges of liquid manure from dairy farming); *U.S. v. Frezzo Brothers, Inc., et al.*, 602 F.2d 1123 (1979) (criminal prosecution of discharges of liquid manure from mushroom farming); and *Menzel v. County*

Utilities Corp., 712 F.2d 91 (1983) (discharge of treated sewage). No circuit authority is cited by Petitioner involving the natural occurrence of stormwater discharge during a rainfall event.

Because the Eleventh Circuit limited its decision to the unique facts of this case, Petitioner's assertion that this decision is inconsistent with other circuits is unpersuasive. For instance, this case is incomparable with the facts at issue in Petitioner's main case, *Sierra Club v. Cedar Point Oil Co.*, supra. In *Cedar Point Oil*, the Sierra Club challenged an oil driller's discharges of produced water directly into the Galveston Bay without an NPDES permit. Unlike the facts in the case at bar, in *Cedar Point Oil*, the defendant could have installed a system which could have eliminated the discharge. The Court noted that defendant had not acted in good faith in attempting to comply with the Clean Water Act. 73 F.3d at 574. Here, the record established that JMS installed a state-of-the-art soil and erosion control system which complied with state requirements for soil and erosion control; yet due to the natural occurrence of rainfall, it was impossible to prevent the discharge of stormwater in its entirety.

Further, Cedar Point's discharges of oil and gas in its produced water were unpermitted and unregulated by any governmental agency. There was no NPDES permit available from the EPA for defendant's discharges, and the general permit which was eventually issued by the EPA *banned* the discharge of produced water. 73 F.3d at 554. In the case at bar, prior to commencing its development activity, JMS applied for and received a development permit from Gwinnett County which met the requirements of Georgia's Erosion and Sedimentation

Control Act. Under this permit, Respondent was authorized to discharge stormwater. Unlike the facts presented in *Cedar Point Oil*, the development permit possessed by JMS mirrored the requirements of the general permit for construction activity proposed by EPD.

Moreover, other Circuit Courts of Appeal have recognized the complexity of the NPDES permitting scheme and have refused to blindly apply the no discharge standard to produce absurd results. The Fourth Circuit, in *Menzel v. County Utilities Corp.*, 712 F.2d 91 (4th Cir. 1983) refused to impose liability against the defendant for discharging sewage without a permit, where the NPDES permit was stayed by the state court. 712 F.2d at 95. The District of Columbia Circuit reversed the trial court in *National Wildlife Federation v. Gorusch*, 693 F.2d 156 (D.C. Cir. 1982) and rejected the assertion that the EPA has a nondiscretionary duty to require dam operators to apply for NPDES permits for dam-induced water quality changes. Significantly, the D.C. Circuit cited to excerpts of the legislative history which suggested that Congress had doubts about the enforceability of the no-discharge standard. 693 F.2d at 179. The Second Circuit, in *Atlantic States Legal Foundation, Inc. v. Eastman Kodak Co.*, 12 F.3d 353 (2nd Cir. 1994), *cert. denied*, ___ U.S. ___, 115 S.Ct. 62 (1994), held that the discharge of pollutants not listed in a valid permit was not unlawful, and noted that the appellant's absolute no discharge interpretation of the permitting scheme "stands that scheme on its head." 12 F.3d at 357. The Ninth Circuit, in *Northwest Environmental Advocates v. Portland*, 56 F.3d 979 (9th Cir. 1995) ruled that the

City of Portland was not in violation of the Act by discharging raw sewage from outfall points which were not specifically set forth in the City's permit.

The Eleventh Circuit's common sense approach is consistent with the approach taken by other circuits on related issues. The decision follows the purposes of the Act and avoids the patently unreasonable result promoted by the Defendant. Therefore, the Petition for Certiorari should be denied.

III. THE ELEVENTH CIRCUIT CORRECTLY RULED THAT THE TRIAL COURT'S INJUNCTION VIOLATED RULE 65(d).

In his final argument for certiorari, Petitioner attacks the Eleventh Circuit's alternative holding that the injunctive relief order entered by the trial court was unenforceable due to its failure to identify with sufficient specificity the acts that JMS was required to do or refrain from doing.[6] Contrary to Petitioner's assertion, the injunctive relief order entered by the trial court did not simply direct JMS to cease discharging stormwater without a permit. The order specifically stated:

> Defendant shall not discharge stormwater into the waters of the United States from its development property in Gwinnett County, Georgia, known as Rivercliff Place **if such discharge**

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[6] As noted by Judge Carnes in his concurrence, the Court's ruling on the injunction is dicta since the Court found that Petitioner was not entitled to any relief whatsoever. 78 F.3d at 1533.

> **would be in violation of the Clean Water Act.** (emphasis added).

The Eleventh Circuit properly recognized that the injunction violated the standards of Rule 65(d) of the Federal Rules of Civil Procedure and failed to contain an "operative command capable of enforcement" as required by this Court. *Longshoremen's Assn. v. Maine Trade Assn.*, 389 U.S. 64 (1967). The Court held that the injunction failed to satisfy two primary functions of Rule 65, namely, (1) to inform parties of what they are called upon to do or refrain from doing by requiring trial courts to identify *exactly* what conduct is proscribed; and (2) to be specific in their terms and to describe in detail the acts to be restrained in order to assist appellate tribunals in assessing the correctness of the judgment below. 78 F.3d at 1531. Injunctions which merely require a party to "obey the law" violate the primary functions of Rule 65(d) and fail to give the restrained party fair notice of what conduct will risk contempt. *Epstein Family Partnership v. K Mart Corp.*, 13 F.3d 762 (3rd Cir. 1994); *Payne v. Travenol Laboratories, Inc.*, 565 F. 2d 895, 897-898 (5th Cir.), *cert. denied*, 439 U.S. 835 (1974). The order failed to satisfy these well-established principles of law and therefore the Eleventh Circuit properly vacated the injunction.

CONCLUSION

The Eleventh Circuit's common sense approach to the limited and unique facts of this case is not contrary to this Court's interpretation of the Clean Water Act, nor inconsistent with rulings of other Circuit Courts of Appeal.

The Court refused Petitioner's efforts to hold JMS to an unjust and impossible standard. Therefore, this Court should deny the Petition for Certiorari.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

TERENCE D. HUGHEY, Plaintiff,	)	1:92-cv-2051-RHH
vs.	)	
JMS DEVELOPMENT CORPORATION, Defendant.	)	

ORDER

(Filed Nov. 24, 1992)

In light of recently enacted federal legislation, this Court hereby STAYS its Preliminary Injunction Order of November 9, 1992, pending further order of the Court.

So ORDERED this 20 day of NOVEMBER, 1992.

/s/ Robert H. Hall
ROBERT H. HALL
UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Terence D. Hughey	:	
Plaintiff,	:	**CIVIL ACTION NO.**
vs.	:	**1:92-cv-2051-RHH**
JMS Development Corporation	:	
Defendant.	:	

JUDGMENT

This action having come before the court, Honorable Robert H. Hall, United States District Judge, for consideration of plaintiff's motion for consideration of plaintiff's motion for entry of final judgment and assessment of civil penalties and attorney's fees, and the Court having granted the motion, it is

Ordered and Adjudged that the defendant JMS Development Corporation pay to the plaintiff Terence D. Hughey $8,500 in civil penalties and reimburse plaintiff for his costs of litigation and attorney's fees reasonably incurred in litigating his claims.

It is further Ordered and Adjudged that the defendant JMS Development Corporation shall not discharge stormwater into the waters of the United States from its development property in Gwinette County, Georgia, known as Rivercliff Place if such discharge would be in violation of the Clean Water Act.

Dated at Atlanta, Georgia, this 25th day of February, 1994.

Luther D. Thomas, Clerk

By: /s/ Pat Austin
Deputy Clerk

Prepared, Filed and Entered
in the Clerk's Office
February 25, 1994
Luther D. Thomas, Clerk

By: /s/ Pat Austin
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

TERENCE D. HUGHEY, Plaintiff, v. JMS DEVELOPMENT CORPORATION, Defendant.	)	CIVIL ACTION NO. 1:92-CV-2051-RHH

AFFIDAVIT OF DAVID M. WORD

(Filed Oct. 15, 1992)

PERSONALLY APPEARED BEFORE THE UNDERSIGNED ATTESTING OFFICER, duly authorized to administer oaths, DAVID M. WORD, who, being duly sworn on oath states that he has personal knowledge of the facts set forth in this affidavit and that he makes this affidavit for use by defendant, JMS Development Corporation, and for all of the purposes authorized by law.

The affiant states on oath:

1) I, David M. Word, am an employee of the Environmental Protection Division, Department of Natural Resources, State of Georgia. I am the Chief of the Water Protection Branch, Environmental Protection Division ("EPD"). In this capacity, I serve as the senior management official for water quality issues at EPD. I have served in this capacity since April, 1990.

2) In my capacity as Chief of the Water Protection Branch, I am familiar with EPD's water quality programs, which include permit issuing authority under delegation from U.S. EPA for National Pollutant Discharge Elimination System ("NPDES") permits in Georgia. EPD has been delegated full authority from the U.S. EPA to implement and enforce this permitting program designed to protect water quality in Georgia. This authority has been vested in EPD since 1974.

3) In order to carry out the agency's responsibilities with regard to storm water runoff, EPD prepared a storm water permitting strategy, which was revised in January, 1992. A true and correct copy of the strategy adopted by EPD is attached hereto as Exhibit "A" and incorporated herein by reference.

4) In order to implement the storm water permitting strategy referenced above, and to meet EPD's responsibilities under the Georgia Water Quality Control Act, a draft general permit for authorization to discharge under the National Pollutant Discharge Elimination System, Storm Water Discharges Associated with Construction Activity, was prepared by EPD. A true and correct of the draft General Permit No. GAR100000 is attached hereto and incorporated herein by reference as Exhibit "B".

5) A Public Notice was prepared by this agency concerning the draft general permit and published on September 23, 1992. A true and correct copy of this Public Notice is attached hereto as Exhibit "C".

6) In order to protect the water quality of the State of Georgia, this agency also enforces the Erosion and Sedimentation Control Act of 1975. This Act requires

permits for certain land-disturbing activities. The permit issuing authority under this Act has been delegated to Gwinnett County, Georgia. The erosion and sedimentation control requirements under this Act substantially meet the requirements proposed by EPD for storm water permitting of discharges associated with construction activity. At the present time, and until the above-referenced general permit becomes effective, EPD regulates storm water discharge from construction activities, such as those engaged in by JMS Development Corporation at Rivercliff Place, through the Erosion and Sedimentation Control Act of 1975.

7) Although the Georgia Water Quality Control Act and its regulations make reference to any discharge of pollutants into waters of the State of Georgia, no NPDES program for issuing NPDES permits has been in place for storm water runoff from construction activities. Because such discharge has been covered by the Soil Erosion and Sedimentation Act of 1975, it has not been a priority of EPD to create such a program. Because of recent changes in federal requirements, EPD has initiated a strategy for permitting storm water runoff and promulgated a proposed general permit to regulate these activities under the NPDES program in Georgia.

8) The NPDES program administered by EPD does not prevent the discharge of all pollutants, but attempts to regulate the concentration of such pollutants. Therefore, the general NPDES permit proposed for storm water runoff from construction activities will not prevent the discharge of all pollutants, but will require permitees to

perform certain erosion and sedimentation control practices, currently required under authority of the Erosion and Sedimentation Control Act of 1975.

9) In Georgia, no individual NPDES storm water discharge permits have been required by EPD or issued by EPD to date. Rather, EPD has undertaken a permitting strategy for storm water runoff which intends to cover all such discharges under a general NPDES permit. The general permit will cover land disturbing activities affecting 5 acres or more of land. This is consistent with the federal requirements.

10) EPD has received applications for individual storm water discharge permits, but the agency is not reviewing these applications until a general rule becomes effective. EPD has received a notice of intent to comply with the general permit from JMS Development Corporation for its subdivision in Gwinnett County, Georgia. No action will be taken on this notice of intent until a general permit becomes effective. Therefore, at this time no further action is required or necessary on the part of JMS Development Corporation to be authorized to discharge storm water into waters of the State of Georgia from the subject property.

11) In addition to a notice of intent, the general permitting requirements will also require a storm water pollution prevention plan to be prepared and implemented by permittees. If the permittee has submitted an erosion and sedimentation control plan, as required by the Georgia Erosion and Sedimentation Control Act of 1975, and such plan has been approved by the appropriate soil and conservation district or an issuing authority

such as Gwinnett County, then the permittee is exempt from preparing a separate storm water pollution prevention plan.

Further, affiant saith not.

/s/ D.M. Word
David M. Word, Affiant

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 8th DAY
OF October, 1992.

/s/ Yolanda Fanning
Notary Public

My Commission Expires:

Notary Public, DeKalb County, Georgia
My Commission Expires Dec. 28, 1993

Georgia Department of Natural Resources
205 Butler Street, S.E., East Floyd Tower,
Atlanta, Georgia 30334
Joe D. Tanner, Commissioner
Harold F. Reheis, Director
Environmental Protection Division

STORM WATER PERMITTING STRATEGY STATE OF GEORGIA

Revised January 1992

I. INTRODUCTION

Section 405 of the Water Quality Act of 1987 amended Section 402 of the Clean Water Act, requiring the Environmental Protection Agency to establish regulations setting forth NPDES permit application requirements for storm water discharges. Storm water is defined as storm water runoff, surface runoff, street wash waters related to street cleaning or maintenance, infiltration (other than infiltration contaminated by seepage from sanitary sewers or by other discharges), and drainage related storm events or snow melt. Georgia has been delegated the NPDES permit program and is therefore responsible for implementation of a program to control storm water discharges.

II. OBJECTIVES

1. To develop a realistic and meaningful storm water management program that can be implemented satisfactorily with the resources available to EPD.

2. To comply with the requirements of the Federal Clean Water Act of 1987 through a general permitting program for applicable municipal and industrial categories.

3. To provide guidance and instructions that will assist municipalities and industries to comply with the permit requirements.

4. To issue general permits for:

   Large municipalities by November 16, 1993
   Medium municipalities by May 18, 1994
   Industrial subcategories on a priority basis starting in late 1992, with the construction activity subcategory being first priority.

5. Municipal and Industrial Water Pollution Control Plants which fall into one of the eleven subcategories of industrial activity will be required to apply for the appropriate general permit for storm water.

III. APPLICABILITY

NPDES permit applications for storm water discharges are required for the following:

1. Discharges associated with industrial activity.

2. Discharges from a municipal separate storm sewer system serving a population of 250,000 or more.

3. Discharges from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000.

4. Discharges for which the State determines that the storm water discharge contributes

to a violation of a Water Quality Standard or is a significant contributor of pollutants.

IV. STATEMENT OF STRATEGY

A. MUNICIPAL

The State of Georgia will require all applicable municipalities to comply with permit application requirements for their municipal separate storm sewers. Municipal separate storm sewers are defined as any conveyance or system of conveyances owned or operated by a local government entity and used for collecting and conveying storm water, which is not part of a Publicly Owned Treatment Works. The Clean Water Act mandates that permits for discharges from municipal separate storm sewers shall require controls to reduce the maximum discharge of pollutants to the maximum extent practical (MEP). The State of Georgia will issue area-wide permits for municipal storm water discharges.

EPD has determined that the following geographic areas contain significant storm water discharges that contribute to violations of Water Quality Standards and therefore must comply with the permit application requirements:

LARGE MUNICIPAL

1. Atlanta Metro

Cobb County
DeKalb County
Clayton County
Fulton County
Gwinnett County

MEDIUM MUNICIPAL

2. Augusta

   Richmond County

3. Macon

   Bibb County

4. Savannah

   Chatham County

5. Columbus

   Muscogee County

B. INDUSTRIAL

Storm water discharge associated with industrial activity is defined as the discharge from any conveyance which is used for collecting and conveying storm water, and which is directly related to manufacturing, processing or materials storage areas. Georgia intends to issue a general permit for each of the following subcategories of industrial activity:

1. Facilities subject to federal effluent limitation guidelines for storm water.

2. Manufacturing Facilities classified as Standard Industrial Classification (SIC) codes 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285), 29, 311, 32 (except 323), 33, 3441, and 373 (see attachment for list of SIC codes).

3. Mining and Oil and Gas Operations classified as SIC codes 10-14 including active and

inactive mining and oil and gas operations with contaminated storm water discharges, except for areas of coal mining operations which have been reclaimed and the performance bond has been released by the appropriate SMCRA authority, or non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990.

4. Hazardous waste treatment, storage or disposal facilities.

5. Landfills, land application sites that receive industrial wastes.

6. Recycling facilities, including facilities classified as SIC codes 5015 and 5093.

7. Steam electric power generating facilities, including coal handling sites.

8. Transportation facilities classified as SIC codes 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations.

9. Treatment works treating domestic sewage or sewage sludge with a design flow of 1.0 MGD or greater, or which are required to have an approved pretreatment program under 40 CFR Part 403.

10. Construction activity (except for disturbances of less than five acres of total land area which are not part of a larger common plan of development or sale).

11. Other specific facilities where materials are exposed to storm water classified under SIC

codes 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-25.

The requirement to obtain a storm water discharge permit does not apply to the following:

1. Discharges of storm water runoff from areas separate from the facility's industrial activities, such as office buildings and parking lots, provided the storm water does not commingle with storm water from the facility's manufacturing, processing or materials storage areas.
2. Discharges of uncontaminated storm water runoff from mining, oil, and gas operations.
3. Discharges of agricultural storm water runoff or return flows from irrigated agriculture.
4. Discharges of storm water runoff from other facilities or activities specifically excluded from the NPDES program under 40 CFR Part 122.

V. PERMIT APPLICATION REQUIREMENTS

A. MUNICIPAL

1. EPD will use a two part permit application.
2. Part I of the permit application is intended to provide an adequate basis for identifying sources of pollutants to the municipal storm sewer system, to preliminarily identify discharges, and to formulate a strategy for characterizing the discharges. This will include:

(a) general information regarding the permit applicant,

(b) a description of the existing legal authority of the applicant,

(c) source identification information including historic use of ordinances or other controls,

(d) information on characteristics of the nature of system discharges including any available data (at a minimum), this would include a "field screen" analysis,

(e) a description of existing structural and nonstructural controls to reduce the discharge of pollutants.

3. Part II of the application is designed to supplement information provided in Part I. This will include:

(a) a demonstration that the legal authority of the permit applicant satisfied regulatory criteria,

(b) identify all major outfalls,

(c) quantitative data from screening analyses for detecting illicit discharges and illegal dumping (This includes sampling and monitoring for at least 20 pollutants at 5-10 representative major outfalls),

(d) management program to control the discharge of pollutants,

(e) an assessment of the performance of proposed controls,

(f) a financial analysis estimating the cost to implement the proposed management programs,

(g) a description of the rules and responsibilities of coapplicants.

B. INDUSTRIAL

1. EPD will issue general permits for the industrial subcategories and will not require individual permit applications to be submitted.

2. Individual permit applicants and group permit applications will be accepted by EPD but will not be processed.

3. Since general permits may not be issued by October 1, 1992, applicants for subcategories may file, in lieu of an application, a request to be considered under a general permit. The request should include the following information:

   (a) Name,

   (b) Address and location of discharge(s) if different from address,

   (c) Industrial subcategory and SIC code.

4. Public Notices will be issued by EPD prior to issuance of a general permit in accordance with the applicable regulations.

5. To apply for coverage under a general permit once it has been issued, the applicant shall submit a Notice to Intent (NOI) in lieu of a formal permit application. The exact content of the NOI will be specified in the

general permit. At a minimum, the NOI shall include the following information:

(a) Name, address, industrial subcategory and SIC code,

(b) Location of the discharge(s),

(c) Name of the receiving water(s),

(d) Any existing quantitative data pertinent to the storm water discharge.

6. For industrial and municipal facilities which currently have an NPDES permit or an LAS permit for non-storm water discharges, those facilities meeting the definition of industrial activity will be required to apply for coverage under the general permit for storm water applicable to such facilities. This shall also apply to facilities with existing NPDES permits which currently address storm water through a standard permit boilerplate condition. EPD will notify such facilities when the general permits have been issued.

VI. TIMETABLE

Schedule for implementation of the Storm Water Permitting Strategy

EVENT	DEADLINE DATE
1. Obtain general permitting authority from EPA	January 28, 1991
2. Finalize the Storm Water Permitting Strategy	February 8, 1991

3.	Transmit a copy of the strategy to EPA	February 28, 1991
4.	Inform the public of the Storm Water Strategy through a series of meeting and news releases starting	March 1991
5.	Deadline for Part I application – large municipal systems	November 18, 1991
6.	Identify and prioritize industrial subcategory permits to be issued	March 1992
7.	Deadline for Part I application – medium municipal systems	May 18, 1992
8.	Issue industrial general permits on a priority basis by subcategory beginning	Late 1992
9.	Deadline for Part II application – large municipal systems	November 16, 1992
10.	Deadline for Part II application – medium municipal systems	May 17, 1993
11.	Issue area-wide permits for large municipal systems	November 16, 1993
12.	Issue area-wide permits for medium municipal systems	May 17, 1994

VII. CONCLUSION

The implementation of the storm water permitting program is consistent with the Georgia

Clean Water Strategy adopted by EPD in April 1988. In addition, managing storm water runoff is critical to addressing a large number of stream segments in the State that are partially supporting their designated use.

Through this general permitting approach, best management practices for the control of storm water runoff can become a legally enforceable tool. This effort in conjunction with education of the public will assist the State in the continuing effort to protect water quality.

Attachment

SIC CODES
SPECIFICALLY ADDRESSED
IN STORM WATER REGULATIONS

SIC CODE	DESCRIPTION	SUBCATEGORY
10	Metal Mining	3
12	Coal Mining	3
13	Oil and Gas Extraction	3
14	Mining/quarrying nonmetallic minerals (except fuels)	3
20	Food and kindred products	11
21	Tobacco products	11
22	Textile mill products	11
23	Apparel and other finished products made from fabrics and similar materials	11

24	Lumber and wood products (except furniture)	2
2434	Wood kitchen cabinets	11
25	Furniture and fixtures	11
26	Paper and allied products	2
265	Paperboard containers and boxes	11
267	Converted paper/ paperboard products	11
27	Printing, publishing, and allied industries	11
28	Chemical and allied products	2
283	Drugs	11
285	Paints, varnishes, lacquers, enamels, etc.	11
29	Petroleum refining and related industries	2
30	Rubber and miscellaneous plastic products	11
31	Leather and leather products	11
311	Leather tanning and finishing	2
32	Stone, clay, glass, concrete products	2
323	Glass products made of purchased glass	11
33	Primary Metal industries	2
34	Fabricated metal products, machinery and transportation equipment	11
3441	Fabricated structural metal	2
35	Industrial and commercial machinery and computer equipment	11

36	Electronic and other electrical equipment components	11
37	Transportation equipment	11
373	Ship and boat building and repairing	2
38	Measuring, analyzing, controlling instruments; photographic, medical, optical goods; watches and clocks	11
39	Miscellaneous manufacturing	11
40	Railroad transportation	8
41	Local/suburban transit and major interurban highway passenger transportation	8
42	Motor freight transportation/warehousing	8
4221	Farm product warehousing/storage	11
4222	Refrigerated warehousing/ storage	11
4225	General warehousing/ storage	11
43	U. S. Postal Service	8
44	Water transportation	8
45	Transportation by air	8
50	Wholesale Trade – Durable Goods	6
5015	Used motor vehicle parts	6
5093	Scrap and waste metals	6
51	Wholesale Trade – Non-Durable Goods	8
5171	Petroleum bulk stations and terminals	8

General Permit
No. GAR000000

State of Georgia
Department of Natural Resources
Environmental Protection Division

Authorization To Discharge Under The National Pollutant Discharge Elimination System Storm Water Discharges Associated With Industrial Activity

In compliance with the provisions of the Georgia Water Quality Control Act (Georgia Laws 1964, p. 416, as amended), hereinafter called the "State Act," the Federal Clean Water Act, as amended (33 U.S.C. 1251 et seq.), hereinafter called the "Clean Water Act," and the Rules and Regulations promulgated to each of these Acts, new and existing storm water point sources within the State of Georgia that are required to have a permit, upon submittal of a Notice of Intent, are authorized to discharge storm water associated with industrial activity to the waters of the State of Georgia in the accordance with the limitations, monitoring requirements and others conditions set forth in Parts I through VIII hereof.

This permit shall become effective on

This permit and the authorization to discharge shall expire at midnight, **October 1, 1997.**

Signed this ___ day of ___ .

[SEAL]

Director,
Environmental Protection
Division

NPDES GENERAL PERMIT
for
STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY

PART I. COVERAGE UNDER THIS PERMIT

A. *Permit Area.*
The permit covers all discharges of storm water associated with industrial activity from point sources to the waters of the State of Georgia.

B. *Eligibility.*

1. This permit may cover all new and existing point source discharges of storm water associated with industrial activity to waters of the State of Georgia, except for storm water discharges identified under paragraph I.B.3.

2. This permit may authorize storm water discharges associated with industrial activity that are mixed with storm water discharges associated with industrial activity from construction activities provided that the storm water discharge from the construction activity is in compliance with the terms, including applicable NOI or application requirements, of a different NPDES general permit or individual permit authorizing such discharges.

3. *Limitations on coverage.* The following storm water discharges associated with industrial activity are not authorized by this permit:

   a. storm water discharges associated with industrial activity that are mixed with sources of non-storm water other than non-storm water discharges that are:

   (i) in compliance with a different NPDES permit; or

   (ii) identified by and in compliance with Part III.A.2 (authorized non-storm water discharges) of this permit.

b. storm water discharges associated with industrial activity which are subject to an existing effluent limitation guideline addressing storm water (or a combination of storm water and process water);

c. storm water discharges associated with industrial activity that are subject to an existing NPDES individual or general permit, except for individual NPDES permits which authorize storm water discharges under Part II.B.16 of the individual permit. Such discharges may be authorized under this permit after an existing permit expires provided the existing permit did not establish numeric limitations for such discharges;

d. storm water discharges associated with industrial activity from construction sites, except storm water discharges from portions of a construction site that can be classified as an industrial activity under 40 CFR 122.26(b) (14) (i) through (ix) or (xi) (including storm water discharges from mobile asphalt plant, and mobile concrete plants).

e. storm water discharges associated with industrial activity that the Director has determined to be or may reasonably be expected to be contributing to a violation of a water quality standard; and

f. storm water discharges associated with industrial activity from inactive mining, inactive landfills, or inactive oil and gas operations occurring on Federal lands where an operator cannot be identified.

4. Storm water discharges associated with industrial activity which are authorized by this permit may be combined with other sources of storm water which are not classified as associated with industrial activity

pursuant to 40 CFR 122.26(b) (14), so long as the discharger is in compliance with this permit.

C. *Authorization.*

1. Dischargers of storm water associated with industrial activity must submit a Notice of Intent (NOI) in accordance with the requirements of Part II of this permit, using a NOI form provided by the Director (or photocopy thereof), to be authorized to discharge under this general permit.

2. Unless notified by the Director to the contrary, owners or operators who submit such notification are authorized to discharge storm water associated with industrial activity under the terms and conditions of this permit 48 hours after the date that the NOI is postmarked.

3. The Director may deny coverage under this permit and require submittal of an application for an individual NPDES permit based on a review of the NOI or other information.

PART II. NOTICE OF INTENT REQUIREMENTS

A. *Deadlines for Notification.*

1. Except as provided in paragraphs II.A.4 (new operator) and II.A.5 (late NOIs), individuals who intend to obtain coverage for an existing storm water discharge associated with industrial activity under this general permit shall submit a Notice of Intent (NOI) in accordance with the requirements of this part thirty (30) days after the issuance of this permit;

2. Except as provided in paragraphs II.A.3 (oil and gas operations), II.A.4 (new operator), and II.A.5 (late NOI) operators of facilities which begin industrial activity after issuance of this permit shall submit a NOI in accordance with the requirements of this part at least 48 hours prior to the commencement of the industrial activity at the facility;

3. Operators of oil and gas exploration, production, processing, or treatment operations or transmission facilities, that are not required to submit a permit application as of October 1, 1992 in accordance with 40 CFR 122.26(c) (1) (iii), but that after October 1,1992 have a discharge of a reportable quantity of oil or a hazardous substance for which notification is required pursuant to either Georgia's Oil or Hazardous Material Spills or Releases Act (O.C.G.A. § 12-14-2), 40 CFR 110.6, 40 CFR 117.21 or 40 CFR 302.6, must submit a NOI in accordance with the requirements of Part II.C of this permit within 14 calendar days of the first knowledge of such release.

4. Where the Operator of a facility with a storm water discharge associated with industrial activity which is covered by this permit changes, the new operator of the facility must submit an NOI in accordance with the requirements of this part at least 48 hours prior to the change.

5. An operator of a storm water discharge associated with industrial activity is not precluded from submitting an NOI in accordance with the requirements of this part after the dates provided in Parts II.A.1, 2, or 3 (above) of the permit. In such instances, the Georgia Environmental Protection Division (EPD) may bring an enforcement action for failure to submit an NOI in a timely manner or for any unauthorized discharges of storm water associated with industrial activity that have occurred on or after the dates specified in Part II.A.1, 2, or 3 (above).

B. *Contents of Notice of Intent.* This Notice of Intent shall be signed in accordance with Part VII.G (signatory requirements) of this permit and shall include the following information:

1. Name, mailing address, county, and location of the facility for which the notification is submitted. Where a mailing address for the site is not available, the location can be described in narrative terms or in

terms of the latitude and longitude of the approximate center of the facility to the nearest 15 seconds where the facility is located.

2. Up to four 4-digit Standard Industrial Classification (SIC) codes that best represent the principal products or activities provided by the facility;

3. The operator's name, address, telephone number, and status as Federal, State, private, public or other entity;

4. The permit number of additional NPDES permits for any discharges (including non-storm water discharges) from the site that are currently authorized by an NPDES permit;

5. The name of the receiving water(s), or if the discharge is through a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the receiving water(s) for the discharge through the municipal separate storm sewer;

6. An indication of whether the owner or operator has existing quantitative data describing the concentration of pollutants in storm water discharges (existing data should not be included as part of the NOI); and

7. An indication as to whether the facility has previously participated in the group application process. Where a facility has participated in a group application, the number EPA assigned to the group application shall be supplied.

C. *Where to Submit.* Facilities which discharge storm water associated with industrial activity must use a NOI form provided by the EPD Director (or photocopy thereof). Forms are available by calling (404) 656-4887. NOIs must be signed in accordance with Part VII.G (signatory requirements) of this permit. NOIs are to be submitted to the EPD Director at the following address:

Georgia Environmental Protection Division
Industrial Wastewater Program
Floyd Towers East, Room 1070
205 Butler Street, S.E.
Atlanta, Georgia 30334

D. **Additional Notification.** Facilities which discharge storm water associated with industrial activity through large or medium municipal separate storm sewer systems (systems located in an incorporated city with a population of 100,000 or more, or in a county identified as having a large or medium system) shall, in addition to filing copies of the Notice of Intent in accordance with paragraph II.C, also submit signed copies of the Notice of Intent to the operator of the municipal separate storm sewer through which they discharge in accordance with the deadlines in Part II.A (deadlines for notification) of this permit.

E. **Renotification.** Upon issuance of a new general permit for some or all of the discharges of storm water covered by this permit, the permittee is required to notify the Director of their intent to be covered by the new general permit. The permittee must submit a new NOI in accordance with the notification requirements of the new general permit.

Part III. SPECIAL CONDITIONS

A. **Prohibition on Non-storm Water Discharges.**

1. Except as provided in paragraph III.A.2 (below), all discharges covered by this permit shall be composed entirely of storm water.

2. a. Except as provided in paragraph III.A.2.b (below), discharges of material other than storm

water must be in compliance with a NPDES permit (other than this permit) issued for the discharge.

b. The following non-storm water discharges may be authorized by this permit provided the non-storm water component of the discharge is in compliance with the measures and controls for non-storm water discharges portion of the storm water pollution prevention plan: discharges from fire fighting activities; fire hydrant flushings; potable water sources including waterline flushings; irrigation drainage; lawn watering; routine external building washdown which does not use detergents or other compounds; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials.

B. **Releases in Excess of Reportable Quantities.**

1. The discharge of hazardous substances or oil in the storm water discharge(s) from a facility shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the facility. This permit does not relieve the permittee of the reporting requirements of Georgia's Oil or Hazardous Material Spills or Releases Act (O.C.G.A. §12-14-2), 40 CFR part 117 and 40 CFR part 302. Where a release containing a hazardous substance in an amount equal to or in excess of a reporting quantity established under either Georgia's Oil or Hazardous Material Spills or Releases Act (O.C.G.A. §12-14-2), 40 CFR 117 or 40 CFR 302, occurs during a 24 hour period:

a. The discharger is required to notify EPD at (404) 656-4813 or 800-241-4113 and the National Response Center (NRC) at 800-424-8802 in accordance with the requirements of Georgia's Oil or Hazardous Material Spills or Releases Act (O.C.G.A. §12-14-2), 40 CFR 117 and 40 CFR 302 as soon as he or she has knowledge of the discharge;

b. The permittee shall submit within 14 calendar days of knowledge of the release a written description of: the release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken in accordance with paragraph III.B.1.c (below) of this permit to EPD at the address provided in Part II.C of this permit and to Georgia's Emergency Response Team at:

Emergency Response Team
Georgia Environmental Protection Division
Floyd Towers East, Room 1166
205 Butler St., S.E.
Atlanta, GA 30334; and

c. The Storm Water Pollution Prevention Plan required under Part IV (Storm Water Pollution Prevention Plans) of this permit must be modified within 14 calendar days of knowledge of the release to: provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

2. Spills. This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

Part IV. STORM WATER POLLUTION PREVENTION PLANS

A Storm Water Pollution Prevention Plan shall be developed for each facility covered by this permit. Storm Water Pollution Prevention Plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility. In addition, the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the Storm Water Pollution Prevention Plan required under this part as a condition of this permit.

A. Deadlines for Plan Preparation and Compliance.

1. Except as provided in paragraphs IV.A.2 and IV.A.3 (oil and gas operations), the plan for a storm water discharge associated with industrial activity that is existing prior to December 31, 1992:

   a. shall be prepared on or before April 1, 1993 (and updated as appropriate);

   b. shall provide for implementation and compliance with the terms of the plan on or before October 1, 1993;

2. The plan for any facility where industrial activity commences after January 1, 1993 shall be prepared,

and except as provided elsewhere in this permit, shall provide for compliance with the terms of the plan and this permit on or before the date 60 calendar days after the commencement of industrial activity (and updated as appropriate);

3. The plan for storm water discharges associated with industrial activity from an oil and gas exploration, production, processing, or treatment operation or transmission facility that is not required to submit a permit application on or before October 1, 1992 in accordance with 40 CFR 122.26(c)(1)(iii), but after October 1, 1992 has a discharge of a reportable quantity of oil or a hazardous substance for which notification is required pursuant to either Georgia's Oil or Hazardous Material Spills or Releases Act (O.C.G.A. §12-14-2), 40 CFR 110.6, 40 CFR 117.21 or 40 CFR 302.6, shall be prepared and except as provided elsewhere in this permit, shall provide for compliance with the terms of the plan and this permit on or before the date 60 calendar days after the first knowledge of such release (and updated as appropriate); and

4. Upon a showing of good cause, the Director may establish a later date in writing for preparing and compliance with a plan for a storm water discharge associated with industrial activity that submits a NOI in accordance with Part II.A.2 (deadlines for notification – new dischargers) of this permit (and updated as appropriate).

B. **Signature and Plan Review**.

1. The plan shall be signed in accordance with Part VII.G (signatory requirements), and be retained onsite at the facility which generates the storm water discharge in accordance with Part VI.D (retention of records) of this permit.

2. The permittee shall make plans available upon request to the Director, or authorized representative, and in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system, to the operator of the municipal system.

3. The Director or authorized representative, may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this Part. Within thirty (30) days of such notification from the Director, (or as otherwise provided by the Director), or authorized representative, the permittee shall make the required changes to the plan and shall submit to the Director a written certification that the requested changes have been made.

C. **Keeping Plans Current.** The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the State of Georgia or if the Storm Water Pollution Prevention Plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified in this plan (description of potential pollutant sources), or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity. Amendments to the plan may be reviewed by EPD in the same manner as Part IV.B (above).

D. **Contents of Plan.** The plan shall be prepared in accordance with the requirements, guidelines, and recommendations in the U.S. Environmental Protection Agency documents titled STORM WATER POLLUTION PREVENTION PLANS FOR INDUSTRIAL ACTIVITIES and NPDES BEST MANAGEMENT

PRACTICES DOCUMENT (JUNE 1981). Both documents are available from the U.S. Government Printing Office or the U.S. Environmental Protection Agency. The plan shall include, at a minimum, the following items:

1. Pollution prevention team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's plan.

2. Description of potential pollutant sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

   a. *Drainage.*

   (1) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under Part IV.D.2.c (spills and leaks) of this permit have occurred, and the locations of the following activities

where such activities are exposed to precipitation: fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, liquid storage tanks, processing areas and storage areas.

(2) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of chemical; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

b. *Inventory of exposed materials.* An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of three years prior to the date of the issuance of this permit and the present; method and location of on-site storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of three years prior to the date of the issuance of this permit and the present;

the location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

c. *Spills and leaks.* A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of three years prior to the effective date of this permit. Such list shall be updated as appropriate during the term of the permit.

d. *Sampling data.* A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

e. *Risk identification and summary of potential pollutant sources.* A narrative description of the potential pollutant sources at the following areas: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and on-site waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g. biochemical oxygen demand, etc.) of concerns shall be identified.

3. Measures and controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified

potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

a. *Good housekeeping.* Good housekeeping requires the maintenance of areas which may contribute pollutants to storm waters discharges in a clean, orderly manner.

b. *Preventive maintenance.* A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g. cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

c. *Spill prevention and response procedures.* Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

d. *Inspections.* In addition to or as part of the comprehensive site evaluation required under Part IV.4 (comprehensive site compliance evaluation) of this permit, qualified facility personnel shall be identified to inspect designated

equipment and areas of the facility at appropriate intervals specified in the plan. A set of tracking or followup procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained.

e. *Employee training.* Employee training programs shall inform personnel responsible for implementing activities identified in the plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the plan. Training should address topics such as spill response, good housekeeping and material management practices. The plan shall identify periodic dates for such training.

f. *Recordkeeping and internal reporting procedures.* A description of incidents such as spills, or other discharges, along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

g. *Non-storm water discharges.*

(1) The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the on-site drainage points that

were directly observed during the test. Certifications shall be signed in accordance with Part VII.G of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of non-storm water at the site.

(2) Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A.2 (authorized non-storm water discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

h. *Sediment and erosion control.* The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

i. *Management of runoff.* The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the

site. The plan shall provide that measures determined to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity (see Parts IV.D.2. (description of potential pollutant sources) of this permit) shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

4. Comprehensive site compliance evaluation/inspection. Qualified personnel shall conduct site compliance evaluations and inspection at appropriate intervals specified in the plan, but except as provided in this part, in no case less than once a year. Such evaluations shall provide:

   a. Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of

equipment needed to implement the plan, such as spill response equipment, shall be made.

b. Based on the results of the inspection, the description of potential pollutant sources identified in the plan (description of potential pollutant sources) and pollution prevention measures and controls identified (measures and controls) shall be revised as appropriate within two weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than twelve weeks after the inspection.

c. A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the plan, and actions taken in accordance with paragraph IV.D.4.b (above) of the permit shall be made and retained as part of the plan for at least one year after coverage under this permit terminates. The report shall be signed in accordance with Part VII.G (signatory requirements) of this permit. This report shall not be submitted to the Director unless specifically requested in writing.

d. Where annual site inspections are shown in the plan to be impractical for inactive mining sites due to the remote location and inaccessibility of the site, site inspections required under this part shall be conducted at appropriate intervals specified in the plan, but, in no case less than once in three years.

5. Additional requirements for storm water discharges associated with industrial activity through municipal separate storm sewer systems serving a population of 100,000 or more.

a. In addition to the applicable requirements of this permit, facilities covered by this permit must comply with applicable requirements in municipal storm water management programs developed under NPDES permits issued for the discharge of the municipal separate storm sewer system that receives the facility's discharge.

b. Permittees which discharge storm water associated with industrial activity through a municipal separate storm sewer system serving a population of 100,000 or more shall make plans available to the municipal operator of the system upon request.

6. Consistency with other plans. Storm Water Pollution Prevention Plans may reflect requirements for Spill Prevention Control and Countermeasures (SPCC) plans developed for the facility under Section 311 of the CWA or Best Management Practices (BMP) Programs otherwise required by an NPDES permit for the facility as long as such requirement is incorporated into the Storm Water Pollution Prevention Plan.

7. Additional requirements for salt storage. Storage piles of salt used for deicing or other commercial or industrial purposes and which generate a storm water discharge associated with industrial activity which is discharged to the waters of Georgia shall be enclosed or covered to prevent exposure to precipitation, except for exposure resulting from adding or removing materials from the pile. Dischargers shall demonstrate compliance with this provision as expeditiously as practicable, but in no event later than three years after issuance of this permit. Piles do not need to be enclosed or covered where storm water from the pile is not discharged to the waters of Georgia.

PART V. NUMERIC EFFLUENT LIMITATION

Coal Pile Runoff. Any discharge composed of coal pile runoff shall not exceed a maximum concentration for any time of 50 mg/L Total Suspended Solids. Coal pile runoff shall not be diluted with storm water or other flows in order to meet this limitation. The pH of such discharges shall be within the range of 6.0-9.0. Any untreated overflow from facilities designed, constructed and operated to treat the volume of coal pile runoff which is associated with a 10 year, 24 hour rainfall event shall not be subject to the 50 mg/L limitation for Total Suspended Solids. Failure to demonstrate compliance with these limitations as expeditiously as practicable, but in no case later than three years after the date of issuance of this permit will constitute a violation of this permit.

PART VI. MONITORING AND REPORTING REQUIREMENTS

A. Monitoring Requirements.

1. *Limitations on monitoring requirements.* The Director can provide written notice to any facility with the activities specifically identified in Part VI.B.2 of this permit to conduct sampling of their storm water discharges associated with industrial activity on a schedule specified by the Director.

2. *Optional monitoring requirements.* During the period beginning on the effective date and lasting through the expiration date of this permit, permittees with facilities identified in Parts VI.A.2.a through j may consider monitoring those storm water discharges identified below to document the presence of any pollutants. Permittees are not to submit monitoring results, unless specifically required in writing by the Director. if monitoring of the storm water discharges

is conducted, the permittee must retain monitoring results in accordance with Part VI.D (retention of records). In addition to the parameters suggested below, the permittee should record the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled;

a. *Section 313 of SARA Title III facilities.* In addition to any monitoring shown in Parts VI.A.2.b through j, facilities with storm water discharges associated with industrial activity that are subject to requirements to report releases into the environment under Section 313 of SARA Title III for chemicals which are classified as 'Section 313 water priority chemicals' should monitor the storm water that is discharged from the facility that comes into contact with any equipment, tank, container or other vessel or area used for storage of a Section 313 water priority chemical, or located at a truck or rail car loading or unloading area where a Section 313 water priority chemical is handled for: Oil and Grease (mg/L); Five Day Biochemical Oxygen Demand (BOD5) (mg/L); COD (mg/L); Total Suspended Solids (TSS) (mg/L); Total Kjeldahl Nitrogen (TKN) (mg/L); Total Phosphorus (mg/L); pH; Acute Whole Effluent Toxicity; and any Section 313 water priority chemical for which the facility is subject to reporting requirements under section 313 of the Emergency Planning and Community Right to Know Act of 1986.

b. *Primary metal industries.* Facilities with storm water discharges associated with industrial activity classified as Standard Industrial Classification (SIC) 33 (Primary Metal Industry) should monitor such storm water that is discharged from the facility for: Oil and Grease (mg/L); BOD5 (mg/L); Chemical Oxygen Demand (COD) (mg/L); TSS (mg/L); pH; Acute Whole Effluent Toxicity; Total Lead (mg/L); Total Cadmium (mg/L); Total Copper (mg/L); Total Arsenic (mg/L); Total Chromium (mg/L); and any pollutant limited in an effluent guideline to which the facility is subject.

c. *Land disposal units/incinerators/BIFs.* Facilities with storm water discharges associated with industrial activity from any active or inactive landfill, land application sites or open dump without a stabilized final cover that has received any industrial wastes (other than wastes from a construction site); and incinerators (including Boilers and Industrial Furnaces (BIFs)) that burn hazardous waste and operate under interim status or a permit under Subtitle C of RCRA, should monitor such storm water that is discharged from the facility for: Ammonia (mg/L), Magnesium (total) (mg/L), Magnesium (dissolved) (mg/L), Nitrate plus Nitrite Nitrogen (mg/L), COD (mg/L), Total Dissolved Solids (TDS) (mg/L), Total Organic Carbon (TOC) (mg/L), Oil and Grease (mg/L), pH, Total Arsenic (mg/L), Total Barium (mg/L), Total Cadmium (mg/L), Total Chromium (mg/L), Total Cyanide (mg/L), Total Lead (mg/L), Total Mercury (mg/L), Total Selenium (mg/L), Total Silver (mg/L), and Acute Whole Effluent Toxicity.

d. *Wood treatment.* Facilities with storm water discharges associated with industrial activity from areas that are used for wood treatment, wood surface application or storage of treated or surface protected wood at any wood preserving or wood surface facilities should monitor such storm water that is discharged from the facility for: Oil and Grease (mg/L), pH, BOD5 (mg/L), COD (mg/L), and TSS (mg/L). In addition, facilities that use chlorophenolic formulations shall measure pentachlorophenol (mg/L) and Acute Whole Effluent Toxicity; facilities which use creosote formulations shall measure Acute Whole Effluent Toxicity; and facilities that use chromium-arsenic formulations shall measure Total Arsenic (mg/L), Total Chromium (mg/L), and Total Copper (mg/L).

e. *Coal pile runoff.* Facilities with storm water discharges associated with industrial activity from coal pile runoff should monitor such storm water that is discharged from the facility for: Oil and Grease (mg/L), pH, TSS (mg/L), Total Copper (mg/l), Total Nickel (mg/l) and Total zinc (mg/l).

f. *Battery reclaimers.* Facilities with storm water discharges associated with industrial activity from areas used for storage of lead acid batteries, reclamation products, or waste products, and areas used for lead acid battery reclamation (including material handling activities) at facilities that reclaim lead acid batteries should monitor such storm water that is discharged from the facility for: Oil and Grease (mg/L); COD (mg/L); TSS (mg/L); pH; Total Copper (mg/l); and Total Lead (mg/l).

g. *Airports.* At airports with over 50,000 flight operations per year, facilities with storm water discharges associated with industrial activity from areas where aircraft or airport deicing operations occur (including runways, taxiways, ramps, and dedicated aircraft deicing stations) should monitor such storm water that is discharged from the facility when deicing activities are occurring for: Oil and Grease (mg/L); BOD5 (mg/L); COD (mg/L); TSS (mg/L); pH; and the primary ingredient used in the deicing materials used at the site (e.g. ethylene glycol, urea, etc.).

h. *Coal-fired steam electric facilities.* Facilities with storm water discharges associated with industrial activity from coal handling sites at coal fired steam electric power generating facilities (other than discharges in whole or in part from coal piles subject to storm water effluent guidelines at 40 CFR 423 – which are not eligible for coverage under this permit) should monitor such storm water that is discharged from the facility for: Oil and Grease (mg/L), pH, TSS (mg/L), Total Copper (mg/l), Total Nickel (mg/l) and Total Zinc (mg/l).

i. *Animal handling / meat packing.* Facilities with storm water discharges associated with industrial activity from animal handling areas, manure management (or storage) areas, and production waste management (or storage) areas that are exposed to precipitation at meat packing plants, poultry packing plants, and facilities that manufacture animal and marine fats and oils, should monitor such storm water that is discharged from the facility for: BOD5 (mg/L); COD (mg/L); TSS (mg/L); TKN (mg/

L); Total Phosphorus (mg/L); pH; and Fecal Coliform (counts per 100 ml).

j. *Additional facilities.* Facilities with storm water discharges associated with industrial activity that:

(i) come in contact with storage piles for solid chemicals used as raw materials that are exposed to precipitation at facilities classified as SIC 30 (Rubber and Miscellaneous Plastics Products) or SIC 28 (Chemicals and Allied Products);

(ii) are from those areas at automobile junkyards with any of the following: (A) over 250 auto/truck bodies with drivelines (engine, transmission, axles, and wheels), 250 drivelines, or any combination thereof (in whole or in parts) are exposed to storm water; (B) over 500 auto/truck units (bodies with or without drivelines in whole or in parts) are stored exposed to storm water; or (C) over 100 units per year are dismantled and drainage or storage of automotive fluids occurs in areas exposed to storm water;

(iii) come into contact with lime storage piles that are exposed to storm water at lime manufacturing facilities;

(iv) are from oil handling sites at oil fired steam electric power generating facilities;

(v) are from cement manufacturing facilities and cement kilns (other than discharges in whole or in part from material storage piles subject to storm water effluent guidelines at 40 CFR 411 – which are not eligible for coverage under this permit);

(vi) are from ready-mixed concrete facilities; or

(vii) are from ship building and repairing facilities;

should monitor such storm water discharged from the facility for: Oil and Grease (mg/L); COD (mg/L); TSS (mg/L); pH; and any pollutant limited in an effluent guideline to which the facility is subject.

3. Sample type. For discharges from holding ponds or other impoundments with a retention period greater than 24 hours, (estimated by dividing the volume of the detention pond by the estimated volume of water discharged during the 24 hours previous to the time that the sample is collected) a minimum of one grab sample may be taken. For all other discharges, data shall be reported for both a grab sample and a composite sample. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches In magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first thirty minutes of the discharge. If the collection of a grab sample during the first thirty minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first thirty minutes was impracticable. The composite sample shall either be flow-weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquot taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes. Grab samples only must be collected and analyzed for the determination of pH, cyanide, whole effluent toxicity, and oil and grease.

4. Representative discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluent, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfalls. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g., low (under 40 percent), medium (40 to 65 percent) or high (above 65 percent)) shall be provided.

B. **Toxicity Testing.** Permittees that are notified that they are required to monitor for acute whole effluent toxicity shall initiate the series of tests described below within the time period specified by the Director.

Test Procedures

a. The permittee shall conduct acute 24 hour static toxicity tests on both an appropriate invertebrate and an appropriate fish (vertebrate) test species (EPA/600/4-90-027 Rev. 9/91, Section 6.1.). Freshwater species must be used for discharges to freshwater waterbodies. Due to the non-saline nature of rainwater, freshwater test species should also be used for discharges to estuarine, marine or other naturally saline waterbodies.

b. All test organisms, procedures and quality assurance criteria used shall be in accordance with *Methods for Measuring the Acute Toxicity of effluent and Receiving Waters to Freshwater and Marine Organisms,* EPA/600/4-90-027 (Rev. September

1991). U.S. EPA has proposed to establish regulations regarding these test methods in the Federal Register December 4, 1989, 53 *FR* 50216.

c. Tests shall be conducted on a grab sample of the discharge at 100 percent strength (no dilution) and a control consisting of synthetic dilution water. Results of all tests conducted with any species shall be reported according to EPA/600/4-90-027 (Rev. September 1991), Section 12, Report Preparation.

C. **Reporting.**

1. Except as provided in Part VI.C.2, permittees are not to submit monitoring results or a certification, unless required in writing by the Director.

2. Facilities with at least one storm water discharge associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must, upon the request of the municipality, submit signed copies of any monitoring reports, certifications and data to the operator of the municipal separate storm sewer system.

D. **Retention of Records.**

1. The permittee shall retain the Storm Water Pollution Prevention Plan developed in accordance with Part IV (Storm Water Pollution Prevention Plans) of this permit until at least one year after coverage under this permit terminates. The permittee shall retain all records of all monitoring information, copies of all reports required by this permit, and records of all data used to complete the Notice of Intent to be covered by this permit, until at least one year after coverage under this permit terminates. This period may be explicitly modified by alternative provisions of this permit (see paragraph VI.D.2 (below) of this

permit) or extended by request of the Director at any time.

2. For discharges subject to sampling requirements pursuant to Part VI.A (monitoring requirements), in addition to the requirements of paragraph VI.D.1 (above), permittees are required to retain for a three year period from the date of sample collection or for the term of this permit, which ever is greater, records of all monitoring information collected during the term of this permit. Permittees must submit such monitoring results to the Director upon the request of the Director.

PART VII. STANDARD PERMIT CONDITIONS

A. **Duty to Comply.**

1. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Georgia Water Quality Control Act (O.C.G.A. § 12-5-20) and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

2. Penalties for violations of permit conditions. The Federal Clean Water Act and the Georgia Water Quality Control Act provide that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this permit, makes any false statement, representation, or certification in any record or other documents submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction be punished by a fine or by imprisonment, or by both. The Federal Clean Water Act and the Georgia Water Quality Control Act also provide procedures

for imposing civil penalties which may be levied for violations of the Act, any permit condition or limitation established pursuant to the Act, or negligently or intentionally failing of refusing to comply with any final or emergency order of the Director.

B. **Continuation of the Expired General Permit**.

This permit expires on October 1, 1997. However, an expired general permit continues in force and effect until a new general permit is issued. Permittees must submit a new NOI in accordance with the requirements of Part II of this permit, using a NOI form provided by the Director (or photocopy thereof) ninety (90) days prior to the expiration date of this permit to remain covered under the continued permit. Facilities that had not obtained coverage under the permit by October 1, 1997 cannot become authorized to discharge under the continued permit.

C. **Need to Halt or Reduce Activity not a Defense.** It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. **Duty to Mitigate**. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. **Duty to Provide Information**. The permittee shall furnish to the Director, within a time specified by the Director, any information which the Director may request to determine compliance with this permit. The permittee shall also furnish to the Director upon request copies of records required to be kept by this permit.

F. **Other Information**. When the permittee becomes aware that he failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Director, he shall promptly submit such facts or information.

G. **Signatory Requirements**. All Notices of Intent, Notices of Termination, storm water pollution prevention plans, reports, certifications or information either submitted to the Director (and/or the operator of a large or medium municipal separate storm sewer system), or that this permit requires be maintained by the permittee, shall be signed.

1. All Notices of Intent shall be signed as follows:

   a. *For a corporation:* by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (1) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (2) the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars) if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

   b. *For a partnership or sole proprietorship:* by a general partner or the proprietor, respectively; or

   c. *For a municipality, State, Federal, or other public agency:* by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (1) the chief executive officer of

the agency, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

2. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

   a. The authorization is made in writing by a person described above and submitted to the Driector.

   b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).

   c. *Changes to authorization.* If an authorization under paragraph VII.G.2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new notice of intent satisfying the requirements of paragraph II.C must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

   d. *Certification.* Any person signing documents under this section shall make the following certification:

      "I certify under penalty of law that this document and all attachments were prepared under my

direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

H. *Oil and Hazardous Substance Liability.* Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the CWA or section 106 of CERCLA.

I. *Property Rights.* The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

J. *Severability.* The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

K. *Requiring an Individual Permit or an Alternative General Permit.*

The Director may require any person authorized by this permit to apply for and/or obtain either an individual NPDES permit or an alternative NPDES general permit.

L. *State/Environmental Laws.*

1. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Act.

2. No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

M. *Proper Operation and Maintenance.* The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of the permit.

N. *Monitoring and Records.*

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. The permittee shall retain records of all monitoring information including all calibration and maintenance

records and all original strip chart recordings for continuous monitoring instrumentation, copies of the reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

3. *Records Contents.* Records of monitoring information shall include:

   a. The date, exact place, and time of sampling or measurements;

   b. The initials or name(s) of the individual(s) who performed the sampling or measurements;

   c. The date(s) analyses were performed;

   d. The time(s) anaylses were initiated;

   e. The initials or name(s) of the individual(s) who performed the analyses;

   f. References and written procedures, when available, for the analytical techniques or methods used; and

   g. The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.

4. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

O. *Inspection and Entry.* The permittee shall allow the Director or an authorized representative of EPA, the State, or, in the case of a facility which discharges through a municipal separate storm sewer, an authorized representative of the municipal operator or the

separate storm sewer receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit; and

3. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment).

P. *Permit Actions.* This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Part VIII. TERMINATION OF COVERAGE

A. *Notice of Termination.* Where all storm water discharges associated with industrial activity that are authorized by this permit are eliminated, the operator of the facility may submit a Notice of Termination that is signed in accordance with Part VII.G (signatory requirements) of this permit. The Notice of Termination shall include the following information:

1. Name, mailing address, county, and location of the facility for which the notification is submitted. Where a mailing address for the site is not available, the location can be described in narrative terms or in terms of the latitude and longitude of the facility to the nearest 15 seconds where the facility is located;

2. Up to four 4-digit SIC codes that best represent the principal products or activities provided by the facility;

3. The operator's name, address, telephone number, ownership status and status as Federal, State, private, public or other entity;

4. The NPDES permit for the storm water discharge associated with industrial activity identified by the Notice of Termination; and

5. The following certification signed in accordance with Part VII.G (signatory requirements) of this permit:

> "I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by a NPDES general permit have been eliminated. I understand that by submitting this notice of termination, that I am no longer authorized to discharge storm water associated with industrial activity under this general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit."

B. *Addresses.* All Notices of Termination are to be sent, using the form provided by the Director (or a photocopy thereof), to the Director of the NPDES program in care of the address shown in Part II.C.

Georgia Department of Natural Resources

205 Butler Street, S.E., East Floyd Tower,
Atlanta, Georgia 30334

Joe D. Tanner, Commissioner
Harold F. Reheis, Director
Environmental Protection Division

September 23, 1992

PUBLIC NOTICE
GEORGIA DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION DIVISION

PUBLIC NOTICE NO. 92-16

NOTICE OF PROPOSED GENERAL NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS FOR STORM WATER DISCHARGES INTO WATERS OF THE STATE OF GEORGIA. NOTICE OF A PUBLIC HEARING ON PROPOSED GENERAL NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS FOR STORM WATER DISCHARGES.

The Environmental Protection Division (EPD) of the Georgia Department of Natural Resources proposes to issue two General National Pollutant Discharge Elimination System (NPDES) Permits for Storm Water Discharges. NPDES Permit No. GAR000000 will authorize storm water discharges from industrial facilities as defined in the Federal regulations promulgated under the Federal Clean Water Act. NPDES Permit No. GAR100000 will authorize storm water discharges from construction activities involving land disturbing activities of five or more acres. These NPDES General Permits authorize a category of applicants to discharge storm water in the

State of Georgia. NPDES Permits are valid for a maximum of five years.

Persons wishing to comment on the proposed general permits are invited to submit same in writing to the EPD address below, no later than October 29, 1992. All comments received prior to or on that date will be considered in the formulation of final determinations regarding these permits.

A public hearing will be held on the proposed NPDES General Permits on October 29, 1992 at 9:00 a.m. in Room 401 of the Department of Transportation, 2 Capitol Square, Atlanta, Georgia. The public hearing will be to present the proposed NPDES General Permits and to receive comments regarding these permits. At the October 29, 1992 public hearing, anyone may present data, make a statement, comment or offer a viewpoint either orally or in writing. Oral statements must be concise to permit everyone an opportunity to be heard. Written comments received on or before October 29, 1992 will be part of the hearing record. Written comments may be mailed to the EPD address below or delivered at the public hearing.

Copies of the proposed permits are available by writing the Environmental Protection Division and including a check in the amount of $12.50 to cover copying charges. The Federal regulations, draft permits, comments received, and other information are available to review at 205 Butler Street, S.E., Floyd Towers East, Room 1070, Atlanta, Georgia 30334, between 9:00 a.m. and 4:00 p.m., Monday through Friday. Copies of the proposed permits are also available for review at the EPD Regional Offices

in Albany, Brunswick and Macon, and at the Georgia Tech Research Institute, Economic Development Laboratory, Regional Offices in Augusta, Albany, Brunswick, Carrollton, Columbus, Douglas, Dublin, Gainesville, Macon, Madison, Rome and Savannah. Addresses for these additional review locations are available by calling (404) 656-4887. For additional information contact: Lawrence W. Hedges or Will Salter, Industrial Wastewater Program, phone (404) 6560-4887.

Please bring this notice to the attention of interested persons.